

EXHIBIT 4

FILED
MAR 24 2000
THOMAS R. FALLOUST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

MARCO BARBANTI, individually and on
behalf of a class of all others similarly situated,

Plaintiff,

v.

W.R. GRACE & COMPANY-CONN (a
Connecticut corporation); W.R. GRACE &
COMPANY(a Delaware corporation); W.R.
GRACE & CO., a/k/a GRACE, an association of
business entities; SEALED AIR
CORPORATION (a Delaware corporation); and
WILLIAM V. CULVER, resident of the State of
Washington,

Defendants.

NO. 00201756-6

CLASS ACTION COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES

I. INTRODUCTION

1.1 Defendants manufactured in Washington and sold throughout Washington Zonolite Attic Insulation knowing that this product contained dangerous levels of readily loftable tremolite and other forms of asbestos (hereinafter "asbestos"). Defendants concealed the dangerous character of Zonolite Attic Insulation from consumers, public officials, and the general public. In the aftermath of this wrongdoing, the proposed plaintiff Class of owners and occupiers of real property throughout Washington remain unaware of substantial dangers to themselves and their

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1 properties posed by the presence of Zonolite Attic Insulation in their homes. Class members
 2 remain unaware of important safeguards necessary to forestall future exposure to hazardous levels
 3 of asbestos contained in Zonolite Attic Insulation. Class members, further, must restrict their use
 4 and enjoyment of their real property, while implementing appropriate operations and maintenance
 5 practices to protect the health and safety of themselves and the general public.

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 7 1.2 This action seeks preliminary and final injunctive and equitable relief, as well as
 8 compensatory relief, in order to advance public health and safety in Washington and to compensate
 9 Washington property owners for harm suffered.

10 11 II. PARTIES

12 2.1 Plaintiff, Marco Barbanti, is a resident of Spokane, Washington, and owner of real
 13 property in which Zonolite Attic Insulation has been installed located in Spokane County,
 14 Washington. Marco Barbanti is prepared to serve as representative of a Class of all others
 15 similarly situated.

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 17 2.2 Defendant, W.R. Grace & Company-Conn (hereinafter "Grace Connecticut"), is a
 18 corporation organized and existing under the laws of the State of Connecticut, with its principal
 19 place of business in Columbia, Maryland. At all times relevant to facts alleged in this Complaint,
 20 Grace Connecticut, or its predecessor in interest, was engaged in the business of manufacturing,
 21 marketing, distributing, and selling Zonolite Attic Insulation throughout the United States,
 22 including Spokane County, Washington.

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 24 2.3 Defendant, W.R. Grace & Company (Delaware) (hereinafter "Grace Delaware"), is
 25 a corporation organized and existing under the laws of the State of Delaware, with its principal
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1 place of business in Columbia, Maryland. Grace Delaware is an alter ego of Grace Connecticut
 2 and co-conspirator with Grace Connecticut and W. R. Grace & Company in unfair and deceptive
 3 business activities causing injury to property interests of Class members. At times relevant to facts
 4 alleged in this Complaint, Grace Delaware was, de facto, a manufacturer and seller of Zonolite
 5 Attic Insulation throughout the United States, including Spokane County, Washington.

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 7 2.4 Defendant, W. R. Grace & Co., a/k/a Grace, (hereinafter "the Grace Association"),
 8 is a closely knit association of corporations, holding companies, trusts, conglomerates, and other
 9 legal entities acting on behalf of and conspiring with one another and commonly acting under the
 10 alias "Grace." The Grace Association includes, but is not limited to, Grace Holding, Inc., a
 11 Delaware corporation; W.R. Grace and Company, a New York corporation; Grace Delaware;
 12 Grace Connecticut; Sealed Air Corporation, a Delaware corporation; and the subsidiaries and
 13 parents of each. Members of the Grace Association are co-conspirators with one another in unfair
 14 and deceptive business activities causing injury to the property interests of Class members. At all
 15 times relevant to facts alleged in this Complaint, the Grace Association, or its predecessor in
 16 interest, was, de facto, a manufacturer and seller of Zonolite Attic Insulation throughout the United
 17 States, including Spokane County, Washington.

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 19 2.5 Defendant, Sealed Air Corporation (hereinafter "Sealed Air"), is a Delaware
 20 corporation and successor to assets and liabilities of W.R. Grace & Company (Delaware). Sealed
 21 Air's principal place of business is Saddle Brook, New Jersey. Sealed Air is an alter ego of and co-
 22 conspirator with above-named defendants in unfair and deceptive business activities causing injury
 23 to the property interests of Class members. Sealed Air was created in an attempt to fraudulently
 24 shield the assets of the above-named defendants from anticipated liability for asbestos claims,
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1 including the claims asserted in this Complaint. Sealed Air does business in the State of
2 Washington, including Spokane County.

3 2.6 Grace Connecticut, Grace Delaware, the Grace Association, and Sealed Air are
4 hereafter collectively referred to as "Grace."

5 2.7 William V. Culver ("Culver") is a resident of the State of Washington. At times
6 material to facts alleged in this Complaint, Culver was President of and member of the Board of
7 Directors of Vermiculite-Northwest Inc., a Washington Corporation that manufactured Zonolite
8 Attic Insulation in the Pacific Northwest at vermiculite expansion plants, including its plant in
9 Spokane, Washington. Further, at times material to facts alleged in this Complaint, Culver was
10 Northwest District Sales Manager for Grace, and in that capacity sold Zonolite Attic Insulation
11 throughout the State of Washington, including Spokane County.
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15 **III. JURISDICTION AND VENUE**

16 3.1 This Court has subject matter jurisdiction over this civil action.

17 3.2 This Court has personal jurisdiction over each of the parties.

18 3.3 Venue in this matter is proper in Spokane County, State of Washington.
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21 **IV. FACTS**

22 4.1 Defendants are manufacturers, distributors, and sellers of Zonolite Attic Insulation.

23 4.2 Zonolite Attic Insulation is chiefly composed of expanded vermiculite ore.
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1 4.3 The predominant source of vermiculite ore used by Grace in the production of
2 Zonolite Attic Insulation was Grace's vermiculite mine located on Zonolite Mountain, near Libby,
3 Montana.

4 4.4 Grace transported vermiculite ore from Zonolite Mountain to expansion plants
5 throughout the United States for purposes of manufacturing the finished insulation product,
6 Zonolite Attic Insulation.

7 4.5 Among those plants to which Libby vermiculite ore was shipped was the
8 Vermiculite-Northwest, Inc., expansion plant located in Spokane, Washington, approximately eight
9 blocks from the Spokane County Courthouse.

10 4.6 At times material to allegations made in this Complaint, Culver was President of
11 Vermiculite-Northwest, Inc., and member of Vermiculite-Northwest, Inc.'s, Board of Directors.
12 Culver manufactured and sold Zonolite Attic Insulation.

13 4.7 At times material to allegations made in this Complaint, Culver was Northwest
14 District Sales Manager for Grace. In that capacity, Culver sold Zonolite Attic Insulation
15 throughout the State of Washington, including Spokane County.

16 4.8 Zonolite Attic Insulation manufactured, distributed, and sold by Defendants was
17 purchased and installed in attics of thousands of homes, businesses, and other properties located
18 throughout the State of Washington.

19 4.9 Plaintiff, Marco Barbanti, is an owner of real property located two blocks from the
20 Spokane County Courthouse in which Zonolite Attic Insulation manufactured and sold by
21 Defendants was installed, which insulation was manufactured from vermiculite ore originating
22 from Grace's Libby, Montana, mine.

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1 4.10 Zonolite Attic Insulation manufactured by Defendants from Libby vermiculite ore is
2 contaminated with asbestos, including tremolite, a rare and exceedingly deadly form of asbestos.

3 4.11 Zonolite Attic Insulation is a loose-fill type insulation. Asbestos contained in
4 Zonolite Attic Insulation takes the form of microscopic dust that is readily suspended, re-
5 suspended, and lofted into the air upon the slightest disturbance of Zonolite Attic Insulation. Once
6 suspended, asbestos fibers maintain their fog-like airborne status for extended periods of time, are
7 readily transported by natural air currents, and represent a continuing source of exposure.

8 4.12 Tremolite asbestos itself consists of sharp, microscopic needle-like fibers that are
9 readily inhaled and easily pierce and lodge in the lining of the lungs. The lungs are unable to
10 remove tremolite asbestos that penetrates the lung tissue, and fibers are not washed out of the lung
11 tissue by blood. As a result, the assaulted lung areas become inflamed, in time heavily scarred, and
12 ultimately fail to function. For persons inflicted with this slow and lingering disease process, it
13 becomes increasingly difficult to breathe. Ultimately, the person suffocates.

14 4.13 Asbestos is a virtually indestructible substance. There is no known safe level of
15 exposure to asbestos.

16 4.14 Asbestos is a known human carcinogen. Inhalation of asbestos fibers, either
17 through chronic exposure or one-time heavy exposure, can lead to mesothelioma (a diffuse cancer
18 which spreads over the lung lining surface), lung cancer, asbestosis, and other pulmonary diseases
19 that are progressive and often fatal.

20 4.15 Disturbance of Zonolite Attic Insulation exposes individuals to heavy doses of
21 airborne asbestos sufficient to cause mesothelioma, lung cancer, asbestosis, and other serious
22 pulmonary diseases.

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1 4.16 At all times material to allegations made in this Complaint, Defendants had actual
2 knowledge that Zonolite Attic Insulation manufactured from Libby, Montana, vermiculite was
3 dangerously contaminated with asbestos.

4 4.17 At all times material to allegations made in this Complaint, Defendants had actual
5 knowledge that exposure to Zonolite Attic Insulation in the ordinary use of that product, exposed
6 users to dangerous levels of asbestos dust.

7 4.18 Zonolite Attic Insulation manufactured by Defendants has caused asbestos
8 contamination to real property in which that product has been installed.

9 4.19 Individuals engaged in ordinary activities commonly associated with property
10 ownership disturb Zonolite Attic Insulation, lofting dangerous levels of asbestos into the air they
11 breathe. Such activities include use of attic spaces for storage of personal belongings, home
12 maintenance activities that involve accessing attic space, home remodeling, installing or replacing
13 of electrical fixtures, upgrading of attic insulation, and use of attic spaces by children for play.

14 4.20 Asbestos dust contained in Zonolite Attic Insulation can readily migrate from attic
15 spaces into living spaces in homes, constituting a present threat to persons occupying those homes.

16 4.21 Individuals engaged in their ordinary use and enjoyment of their real property in
17 which Zonolite Attic Insulation is installed are exposed to levels of asbestos threatening to their
18 health and safety.

19 4.22 Persons who own and/or reside in homes insulated with Zonolite Attic Insulation are
20 unaware that Zonolite Attic Insulation contains dangerous levels of asbestos and are unaware of the
21 health risks associated with asbestos.

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CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND
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1 4.23 Persons who own and/or reside in homes insulated with Zonolite Attic Insulation are
2 unaware that disturbing of Zonolite Attic Insulation exposes individuals to dangerous levels of
3 asbestos.

4 4.24 Persons who own and/or reside in homes insulated with Zonolite Attic Insulation are
5 unaware that Zonolite Attic Insulation has contaminated their real property.

6 4.25 Persons who own and/or reside in homes insulated with Zonolite Attic Insulation are
7 unaware that prudence requires limitation of activities so as to avoid exposure to asbestos dust
8 contained in Zonolite Attic Insulation.

9 4.26 While consumers remain largely unaware of the substantial dangers posed by
10 Zonolite Attic Insulation, Defendants were aware of, and engaged in an intentional pattern and
11 practice of concealing, the dangers associated with Zonolite Attic Insulation.

12 4.27 From approximately 1930 until 1963, Zonolite Company operated the vermiculite
13 mining and processing plant on Zonolite Mountain. Grace acquired the Libby vermiculite mine
14 from Zonolite Company in 1963. Grace had actual knowledge at the time of its purchase that the
15 vermiculite ore from Zonolite Mountain used to manufacture Zonolite Attic Insulation was heavily
16 contaminated with tremolite asbestos. Grace was aware of reliable estimates that ore originating
17 from Zonolite Mountain regularly contained in excess of 20% asbestos.

18 4.28 At all times material to facts alleged in this Complaint, Defendants had actual
19 knowledge that asbestos was extraordinarily dangerous and that exposure to even minuscule levels
20 of asbestos causes potentially fatal diseases, including asbestosis, lung cancer, and mesothelioma.

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1 4.29 Grace was aware of secret medical tests by Zonolite Company that demonstrated
2 that a substantial portion of Zonolite Company's workforce had contracted lung diseases as a result
3 of asbestos contained in the vermiculite used to manufacture Zonolite Attic Insulation.

4 4.30 In the 1970's, Defendants conducted internal tests confirming high incidents of lung
5 disease among workers exposed to vermiculite used in the manufacture of Zonolite Attic
6 Insulation.

7 4.31 Despite actual knowledge of the health risks associated with Zonolite Attic
8 Insulation, Defendants continued to aggressively manufacture, promote, distribute, and sell
9 Zonolite Attic Insulation, while concealing and/or failing to disclose the substantial risks of disease
10 associated with asbestos exposure.

11 4.32 Grace conducted secret animal tests that demonstrated an association between
12 tremolite asbestos and mesothelioma. Despite these findings confirmed by its own tests, Grace
13 publicly denied the existence of a relationship between tremolite asbestos exposure and
14 mesothelioma.

15 4.33 Despite knowledge of the unreasonable risks to human health, Defendants
16 intentionally chose to not warn the public of health risks associated with Zonolite Attic Insulation.
17 Defendants' decision to conceal from the public such health risks was predicated on Defendants'
18 calculation of the financial reward to Defendants should the public be kept uninformed.

19 4.34 Until Grace withdrew Zonolite Attic Insulation from the market in 1984, Defendants
20 affirmatively and actively engaged in steps to conceal the toxicity and dangers of Zonolite Attic
21 Insulation from the public and from government agencies charged with police powers to protect
22 public health and safety.

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1 4.35 In 1970, state and federal officials cited various plants belonging to Grace for
2 excessive asbestos exposure levels, and advised Grace that it should provide warning labels on
3 Zonolite Attic Insulation because of the presence of dangerous asbestos dust. Among the plants for
4 which such warnings were recommended was the Vermiculite-Northwest, Inc., plant located in
5 Spokane, Washington. Defendants refused to place such warning labels on Zonolite Attic
6 Insulation and misleadingly represented that Zonolite Attic Insulation was safe and did not contain
7 asbestos.
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9 4.36 Grace falsely and/or misleadingly represented to government officials that Zonolite
10 Attic Insulation had been treated with a binder (a substance that would prevent deadly tremolite
11 fibers from being released into the air) while, in fact, no such binder had been successfully
12 developed or applied to Defendants' Zonolite Attic Insulation product.
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14 4.37 Grace failed to test adequately or properly the use of a binder in preventing
15 hazardous exposure to asbestos.

16 4.38 Although Defendants publicly represented that Zonolite Attic Insulation posed no
17 health hazard, internal Grace memoranda demonstrate that Grace knew that Zonolite Attic
18 Insulation posed an unreasonable risk to human health and that Grace anticipated that government
19 agencies would eventually ban Zonolite Attic Insulation entirely.
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21 4.39 As early as 1977, Grace drafted a press release, stating that it was "sufficiently
22 concerned about the entire issue of asbestos and associated health hazards to discontinue this
23 product [Zonolite Attic Insulation]." Despite Grace's actual knowledge that Zonolite Attic
24 Insulation posed a substantial hazard to the consuming public, Grace determined to withhold this
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1 important press release, to conceal the health hazards associated with Zonolite Attic Insulation, and
2 to continue to aggressively sell Zonolite Attic Insulation for an additional seven years.

3 4.40 Defendants had superior knowledge, as compared with the consuming public and
4 government enforcement agencies, with respect to the health dangers posed by Zonolite Attic
5 Insulation, but concealed their knowledge of the health dangers associated with their product
6 because they believed that asbestos contained in Zonolite Attic Insulation would go undetected.

7 4.41 As a proximate result of Defendants' conduct, there is a present, compelling, and
8 immediate need to provide appropriate warnings to the public of the health dangers associated with
9 Zonolite Attic Insulation. Necessary warnings include:
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11 4.41.1 Warning that Zonolite Attic Insulation contains tremolite, an
12 especially dangerous form of asbestos, and that persons should avoid exposure to Zonolite Attic
13 Insulation.

14 4.41.2 Warning that disturbing of Zonolite Attic Insulation exposes
15 individuals to hazardous levels of asbestos.

16 4.41.3 Warning that persons should not enter or use attic spaces in
17 properties believed to contain Zonolite Attic Insulation, together with advisories on how to identify
18 Zonolite Attic Insulation.

19 4.41.4 Warning that tests should be conducted on properties where Zonolite
20 Attic Insulation has been disturbed and that disturbance poses a threat that asbestos may have been
21 transported to living spaces of that property.

22 4.41.5 Warning that property owners and occupants where Zonolite Attic
23 Insulation has been installed should not engage in remodeling or other activities that involve the
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25 CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND
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1 disturbance of Zonolite Attic Insulation until an asbestos containment plan has been established by
2 qualified asbestos abatement personnel.

3 4.42 As a direct and proximate result of Defendants' conduct, real properties of Plaintiff
4 and Class members have been contaminated with asbestos, requiring the development of, and
5 implementation of, an appropriate operations and maintenance program to limit further exposure to
6 dangerous levels of asbestos.

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8 4.43 As a direct and proximate result of Defendants' conduct, Plaintiff and Class
9 members will incur substantial costs of property remediation, restoration, and asbestos abatement.

10 4.44 As a direct and proximate result of Defendants' conduct, owners of real property in
11 which Zonolite Attic Insulation has been installed have been interfered with in their use and quiet
12 enjoyment of their real property.

13 4.45 Plaintiff and members of the Class possess property interests in claims against
14 various Grace defendants for harms arising out of conduct asserted in this Complaint.

15 4.46 Grace defendants, in the course of their trade and business, engaged in unfair and
16 deceptive business practices for purposes of causing injury to the property interests of Plaintiff and
17 Class members, including fraudulently shielding the assets of one another for purposes of evading
18 asbestos liability.

19 4.47 Grace defendants' unfair and deceptive business practices have proximately caused
20 injury to Plaintiff and members of the Class in their property, including injury to their property
21 interests in claims asserted in this Complaint.
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V. CLASS ACTION ALLEGATIONS

5.1 Plaintiff brings this action as a class action for injunctive, equitable, and monetary relief pursuant to Civil Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3) on behalf of himself and a defined class of similarly situated individuals. The Class is defined as: All owners or occupiers of real property located in the State of Washington in which Zonolite Attic Insulation has been installed.

5.2 The members of the Class are so numerous that their joinder is impracticable.

5.3 There are questions of law and fact common to the Class. Members of the Class share a well-defined community of interest in the questions of law and fact that affect members of the Class, which questions predominate over questions solely affecting individual members.

Illustrative common issues of law and fact include, but are not limited to:

5.3.1 Whether Zonolite Attic Insulation designed, manufactured, and sold by Defendants is not reasonably safe in its design and/or manufacture in that it contains dangerous levels of readily airborne asbestos.

5.3.2 Whether Defendants failed to provide adequate warnings in connection with Zonolite Attic Insulation.

5.3.3 Whether asbestos, contained in Zonolite Attic Insulation and installed in homes throughout Washington, constitutes a present threat to public health and safety.

5.3.4 Whether Zonolite Attic Insulation installed in homes across Washington constitutes a present threat to health and safety in that owners and occupants engaged in their ordinary use and enjoyment of their properties, will be exposed to dangerous levels of asbestos.

5.3.5 Whether owners and occupiers of properties in which Zonolite Attic Insulation are installed are unaware of, or unappreciative of, dangers posed by this product,

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1 unaware of safeguards that must be taken to avoid harmful exposure to asbestos, unaware of
2 operations and maintenance practices appropriate to properties where Zonolite Attic Insulation is
3 installed, and unaware of the necessity to, and prudent means by which to, engage in such activities
4 as testing, remediation, removal, or abatement.

5 5.3.6 Whether Defendants concealed from consumers and government agencies
6 responsible for public health, material information concerning the health hazards associated with
7 Zonolite Attic Insulation.

8 5.3.7 Whether Defendants' public announcements, statements, or representations
9 concerning Zonolite Attic Insulation were untrue, deceptive, or misleading.

10 5.3.8 Whether Defendants' public announcements, statements, or representations
11 with respect to Zonolite Attic Insulation had a capacity to deceive a substantial portion of the
12 consuming public.

13 5.3.9 Whether Grace's uniform practices of representing Zonolite Attic Insulation
14 as asbestos free and safe constitute unfair or deceptive business practices.

15 5.3.10 Whether preliminary injunctive relief is warranted, including warnings to the
16 public regarding Zonolite Attic Insulation.

17 5.3.11 Whether members of the Class have suffered harm to their property interests
18 in that the presence of Zonolite Attic Insulation requires property owners and property occupants to
19 restrict their use and quiet enjoyment of their property.

20 5.3.12 Whether Defendants' conduct with respect to Zonolite Attic Insulation
21 warrants exemplary damages.

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1 5.4 The claims of Plaintiff arise from the same events and course of conduct by
2 Defendants that give rise to the claims of the other Class members. Plaintiff is a member of the
3 Class he seeks to represent and possesses the same interests and has suffered the same injuries as
4 other Class members, making Plaintiff's claims typical of the claims of the Class generally.

5 5.5 Plaintiff will fairly and adequately represent and protect the interests of the
6 members of the Class. Plaintiff has retained counsel competent and experienced in complex class
7 actions and products liability litigation.

8 5.6 Class certification is appropriate pursuant to Civil Rule 23(b)(1)(A) because
9 prosecution of separate actions by individual members of the Class would create a risk of
10 inconsistent or varying adjudications, establishing incompatible standards of conduct for Grace.

11 5.7 Class certification is appropriate pursuant to Civil Rule 23(b)(2) because Defendants
12 have acted, or refused to act, on grounds generally applicable to the Class, in that Defendants have
13 concealed and failed to disclose hazards associated with Zonolite Attic Insulation, rendering
14 millions of homeowners unaware of present dangers in their homes and causing harms and
15 hardship to those who do learn of this present danger. Defendants' common course of conduct
16 makes appropriate preliminary and final injunctive and declarative relief.

17 5.8 Class certification is appropriate pursuant to Civil Rule 23(b)(3) because questions
18 of law and fact common to the Class predominate over any questions affecting only individual
19 members of the Class and class-wide adjudication of Class members' claims is superior to other
20 available methods for the fair and efficient adjudication of this controversy.

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1 **VI. CLAIMS FOR RELIEF**

2 6.1 Plaintiff hereby asserts each and every cause of action and remedy at law or in
3 equity supported by facts alleged in this Complaint. Plaintiff's causes of action and remedies at
4 law and in equity include, but are not limited to, each of the following:
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6 **VII. PRODUCT LIABILITY**

7 7.1 Zonolite Attic Insulation is not reasonably safe in design and not reasonably safe in
8 its manufacture in that it contains readily-loftable asbestos, exposing owners and occupiers of
9 property to unreasonable dangers of injury and damage, proximately causing harm to Plaintiff and
10 Class members. Harms suffered include, but are not limited to, contamination of real and personal
11 property, costs of testing, costs of property remediation, costs of tremolite containment, costs of
12 asbestos abatement, and costs and hardship resulting from reasonable effort to avert harm,
13 including interference with Class members' use and enjoyment of real property.
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15 7.2 Zonolite Attic Insulation manufactured by Defendants is defective in its design and
16 formulation in that it poses dangers beyond that contemplated by an ordinary consumer, which
17 dangers proximately caused harm to Plaintiff and Class members. Harms include, but are not
18 limited to, contamination of real and personal property, costs of testing, costs of property
19 remediation, costs of asbestos containment, costs of asbestos abatement, and costs and hardship
20 resulting from reasonable effort to avert harm, including interference with Class members' use and
21 enjoyment of real property.
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23 7.3 Zonolite Attic Insulation was not accompanied by appropriate or adequate warnings
24 and not accompanied by appropriate or adequate instructions concerning the safe use, handling, or
25 installation of the product, proximately causing harm to Plaintiff and Class members. Harms
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LAW OFFICES
LUKINS & ANNIS
A PROFESSIONAL SERVICE CORPORATION
1600 WASHINGTON TRUST FINANCIAL CENTER
117 W STRAUSS AVE.
SPOKANE, WA 99201-0466
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1 suffered include, but are not limited to, contamination of real and personal property, costs of
2 testing, costs of property remediation, costs of asbestos containment, costs of asbestos abatement,
3 and costs and hardship resulting from reasonable effort to avert harm, including interference with
4 Class members' use and enjoyment of real property.

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6 7.4 Zonolite Attic Insulation manufactured by Defendants was defective due to
7 inadequate post-marketing warnings and/or instructions in that Defendants acquired actual
8 knowledge of risks to health posed by Zonolite Attic Insulation, but failed to provide adequate
9 warnings to users, consumers, or the public, proximately causing harm to Plaintiff and Class
10 members. Harms suffered include, but are not limited to, contamination of real and personal
11 property, costs of testing, costs of property remediation, costs of asbestos containment, costs of
12 asbestos abatement, and costs and hardship resulting from reasonable effort to avert harm,
13 including interference with Class members' use and enjoyment of real property.

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15 7.5 Defendants had a duty to exercise reasonable care in the manufacture, testing,
16 distribution, and sale of Zonolite Attic Insulation, including a duty to ensure that its product did not
17 pose unreasonable risk of harm to consumers and users.

18 7.6 Defendants failed to exercise reasonable care in the manufacture, testing,
19 distribution, and sale of Zonolite Attic Insulation, proximately causing harm to Plaintiff and
20 members of the Class. Harms suffered include, but are not limited to, contamination of real and
21 personal property, costs of testing, costs of property remediation, costs of asbestos containment,
22 costs of asbestos abatement, and costs and hardship resulting from reasonable effort to avert harm,
23 including interference with Class members' use and enjoyment of real property.
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VIII. UNFAIR AND DECEPTIVE BUSINESS PRACTICES

8.1 Defendants engaged in a uniform practice of issuing material misrepresentations of fact regarding the safety of Zonolite Attic Insulation and tremolite, including misrepresentations to consumers, governmental officials, and the general public. Standardized misrepresentations include, but are not limited to, the misrepresentation that tremolite is not hazardous, that Zonolite Attic Insulation is safe, and that Zonolite Attic Insulation is a "non-asbestos product."

8.2 Defendants knew, or are appropriately charged with knowledge, that Zonolite Attic Insulation poses substantial and unreasonable risks to human health and that asbestos contained in Zonolite Attic Insulation is a cause of potentially fatal diseases including asbestosis, lung cancer, and mesothelioma.

8.3 Defendants knew that its representations regarding Zonolite Attic Insulation and tremolite were untrue and/or recklessly or negligently made such representations without regard to their truth or falsity.

8.4 Defendants made the aforementioned misrepresentations with the intent to deceive and to induce the general public and members of the Class to purchase and use Zonolite Attic Insulation.

8.5 Class members and the general consuming public reasonably and justifiably relied upon the truth and completeness of Defendants' representations. In the exercise of reasonable diligence, Class members and the general public could not have discovered the defects and hazards of Zonolite Attic Insulation concealed by Defendants.

8.6 Defendants, with the intent to sell Zonolite Attic Insulation and to induce the public to purchase this product, published, disseminated, and placed before the public, standardized

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1 announcements, statements, and representations that contained untrue, deceptive, and misleading
 2 claims about the safety and character of Zonolite Attic Insulation.

3 8.7 Defendants' untrue, deceptive, and misleading representations had a tendency to
 4 deceive, or capacity to mislead, a substantial portion of the purchasing public.

5 8.8 Defendants' unfair and deceptive acts and practices impacted the public interest in
 6 that it has exposed the public to substantial risks to health and safety.

7 8.9 Grace defendants, in the course of their business and trade, engaged in unfair and
 8 deceptive business practices in an effort to fraudulently conceal the assets of one another so as to
 9 evade anticipated asbestos liability, including anticipated liability arising out of Defendants'
 10 manufacture, distribution, and sale of Zonolite Attic Insulation, causing injury to Plaintiff and
 11 members of the Class in their property.
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13 8.10 Class members have suffered injury to their business and/or property as a direct and
 14 proximate result of the unfair, misleading, and deceptive trade practices of Defendants. Losses
 15 suffered include, but are not limited to, contamination of real and personal property, costs of
 16 testing, costs property remediation, costs of asbestos containment, costs of asbestos abatement, and
 17 costs and hardship resulting from reasonable effort to avert harm, including interference with Class
 18 members' use and enjoyment of real property.
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22 IX. INJUNCTIVE RELIEF

23 9.1 Plaintiff and members of the Class have no complete, speedy, or adequate remedy at
 24 law with respect to present and continuing dangers to public health and safety posed by
 25 Defendants' product.
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1 9.2 Absent preliminary and final injunctive relief, Plaintiff, Class members, and the
2 public at large, will suffer irreparable injury, including:

3 9.2.1 Unknowning exposure to hazardous levels of asbestos.

4 9.2.2 Risks of contracting serious and commonly fatal diseases caused by
5 exposure to asbestos.

6 9.2.3 Unknowning and inadvertent contamination of real and personal
7 property with hazardous levels of asbestos.

8 9.2.4 Risks of engaging in ordinary uses of real property that spread
9 dangerous levels of asbestos and expose persons to hazardous levels of asbestos.

10 9.3 Plaintiff and Class members are entitled to preliminary and final injunctive relief
11 appropriate to safeguarding the public and themselves from exposure to Defendants' product.
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15 **X. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests that this Court enter an order, decree, and judgment in
17 favor of the Class and against Defendants, and each of them, as follows:

18 1. An order certifying this action as a class action, or appropriate subclasses or issues
19 thereof pursuant to Civil Rule 23(c)(4), appointing named Plaintiff as a Class Representative, and
20 designating undersigned counsel as counsel for the Class;

21 2. Interim and final orders establishing a Defendant-funded Court-supervised
22 identification program which, through use of Defendants' records, sales records, publication, and
23 other means, will identify homes and buildings containing Zonolite Attic Insulation, together with
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1 a testing program to verify the suspected existence of Zonolite Attic Insulation in homes and other
2 buildings.

3 3. Interim and final orders establishing a Defendant-funded Court-supervised
4 notification program that issues timely and pertinent warnings and information to property owners,
5 public and private health agencies, and members of the building trades, including:

- 6 a. Warning that Zonolite Attic Insulation contains asbestos and that persons
7 should avoid exposure to Zonolite Attic Insulation.
- 8 b. Pertinent advisories regarding how to locate and identify Zonolite Attic
9 Insulation.
- 10 c. Warning that disturbance of Zonolite Attic Insulation exposes individuals to
11 hazardous levels of asbestos.
- 12 d. Warning that persons should not enter areas containing Zonolite Attic
13 Insulation without taking appropriate safety precautions.
- 14 e. Warning that tests should be conducted on properties where Zonolite Attic
15 Insulation has been disturbed or where asbestos dust from Zonolite Attic
16 Insulation may have been transported into living spaces.
- 17 f. Warning that property owners and occupants should not engage in
18 remodeling or other building activities that risk disturbance of Zonolite Attic
19 Insulation, and that such remodeling and building activities should be
20 performed only by qualified personnel and in accordance with an asbestos
21 containment plan.

22 4. A final order establishing a Defendant-funded Court-supervised health and safety
23 research and education trust, which conducts pertinent research and disseminates relevant findings
24 to Class members, to public and private health agencies, to professional building trades
25 associations, and to property owners, the missions of the trust to include development of a
26 specialized operations and maintenance program that sets forth safety procedures and remediation
techniques appropriate to Zonolite Attic Insulation contamination.

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1 5. A final order establishing a Defendant-funded Court-supervised remediation and
2 containment program and fund, which will provide to Class members:

3 a. Information, techniques, procedures, and protocols for safe containment of
4 the asbestos hazards during anticipated activities of repair, remodeling, storage, or
5 other use of attic space, venting ceiling fans, etc.

6 b. Training, equipment, funding, and other assistance necessary to ensure a safe
7 environment in homes and other buildings during and following repair,
8 maintenance, remodeling, and other activities which disturb Zonolite Attic
9 Insulation.

10 c. Training, equipment, funding, and other assistance necessary to contain and
11 control asbestos hazards from undisturbed Zonolite Attic Insulation so as to ensure a
12 safe environment in homes and other buildings during normal anticipated use.

13 6. A judgment in favor of the Class and against Defendants, jointly and severally, in an
14 amount to be determined at the time of trial to compensate Class members for damages suffered;

15 7. An award of punitive damages against Defendants to punish and deter like conduct
16 by others;

17 8. An award of attorneys' fees and costs of suit as allowed by law; and

18 9. For such other relief as the Court may deem just and equitable.

19 DATED this 24th day of March, 2000.

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